UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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4	NICOLE ROGERS						
5	Plaintiff)					
6	V.) Case No.:					
7)					
8	VERDE ENERGY USA, INC.,) COMPLAINT AND DEMAND FOR) JURY TRIAL					
9	Defendant						
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11	<u>COMPLAINT</u>						
12	NICOLE ROGERS ("Plaintiff"), by and through her attorneys, KIMMEL &						
13	SILVERMAN, P.C., alleges the following against VERDE ENERGY USA, INC.						
14							
15	("Defendant"):						
16	INTRO	ODUCTION					
17	1. Plaintiff's Complaint is based on the Telephone Consumer Protection						
18	Act ("TCPA"), 47 U.S.C. § 227 et seq.						
19	_	ION AND VENUE					
20	JURISDICI	ION AND VENUE					
21	2. Jurisdiction of this Court	arises pursuant to 28 U.S.C. § 1331. Sec					
22	Mims v. Arrow Fin. Services, LLC, 13	32 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012)					
2324	3. Defendant conducts busin	ness in the Commonwealth of Pennsylvania					
25	and as such, personal jurisdiction is es	tablished.					

4.

. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

PARTIES

5. Plaintiff is a natural person residing Farrell, Pennsylvania 16121.

- 6. Plaintiff is a "person" as that term is defined by 47 U.S.C. § 153(39).
- 7. Defendant is a corporation that has its office located in Norwalk, Connecticut 06851.
- 8. Defendant is a "person" as that term is defined by 47 U.S.C. §153(39).
- 9. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

- 10. Plaintiff has a cellular telephone number that she has had for more than one year.
 - 11. Plaintiff has only used this number as a cellular telephone number.
- 12. The phone number has been assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls.
- 13. Plaintiff never provided permission to Defendant to call her cellular telephone number or to contact her regarding any goods or services offered by Defendant.

14	•	Beginning	in	November	2014,	and	continuing	through	April	2015
Defenda	nt c	alled Plainti	iff (on her cellu	lar tele	phon	ıe.			

- 15. When contacting Plaintiff on her cellular telephone, Defendant used an automatic telephone dialing system and automatic and/or pre-recorded messages.
- 16. Defendant's messages would state its name and that its call was "for marketing purposes."
 - 17. Defendant's telephone calls were not made for "emergency purposes."
- 18. For example, Defendant called Plaintiff on: November 20, 2014; November 22, 2014; and April 15, 2015.

DEFENDANT VIOLATED THE TELEPHONE CONSUMER PROTECTION ACT

- 19. Plaintiff incorporates the forgoing paragraphs as though the same were set forth at length herein.
- 20. Defendant initiated multiple automated telephone calls to Plaintiff's cellular telephone using a prerecorded voice.
- 21. Defendant initiated these automated calls to Plaintiff using an automatic telephone dialing system.
 - 22. Defendant's calls to Plaintiff were not made for emergency purposes.
- 23. Defendant's calls to Plaintiff, in and after November 2014, were not made with Plaintiff's prior express consent.

24.	Defendant's	acts as	described	above	were	done	with	malicious
intentiona	ıl, willful, reckl	ess, war	nton and neg	gligent	disrega	ard for	Plain	tiff's rights
under the law and with the purpose of harassing Plaintiff.								

- 25. The acts and/or omissions of Defendant were done unfairly, unlawfully, intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal defense, legal justification or legal excuse.
- 26. As a result of the above violations of the TCPA, Plaintiff has suffered the losses and damages as set forth above entitling Plaintiff to an award of statutory, actual and trebles damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, NICOLE ROGERS, respectfully prays for a judgment as follows:

- a. All actual damages suffered pursuant to 47 U.S.C. § 227(b)(3)(A);
- b. Statutory damages of \$500.00 per violative telephone call pursuant to 47 U.S.C. § 227(b)(3)(B);
- c. Treble damages of \$1,500.00 per violative telephone call pursuant to 47 U.S.C. §227(b)(3);
- d. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3);
- e. Any other relief deemed appropriate by this Honorable Court.

DEMAND FOR JURY TRIAL PLEASE TAKE NOTICE that Plaintiff, NICOLE ROGERS, demands a jury trial in this case. RESPECTFULLY SUBMITTED, DATED: 05-04-15 KIMMEL & SILVERMAN, P.C. By: /s/ Craig Thor Kimmel_ CRAIG THOR KIMMEL Attorney ID # 57100 Kimmel & Silverman, P.C. 30 E. Butler Pike Ambler, PA 19002 Phone: (215) 540-8888 Fax: (877) 788-2864 Email: <u>kimmel@creditlaw.com</u>